

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

**IMPORTANT NOTICE TO THE BAR AND PUBLIC
GUIDANCE FOR IMPLEMENTING PRIVACY-RELATED RULES AND FORM CHANGES
EFFECTIVE DECEMBER 1, 2003**

As previously posted in October 2003, at its September 2002 session, the Judicial Conference approved proposed amendments to the Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms which will, *inter alia*, implement the conference policy on privacy and public access to electronic case files. *These amendments are scheduled to take effect December 1, 2003.*

The amendments are consistent with the Judicial Conference's September 2001 policy statement regarding documents in bankruptcy cases. That policy states that such documents generally should be available electronically with the proviso that the Bankruptcy Code and Rules should be amended as necessary to allow the Court to collect a debtor's full Social Security number but display only the last four digits.

Information regarding the entirety of the Rule and Form amendments, including the new privacy requirements, is available on the Federal Rulemaking page of the Judiciary's website at <http://www.uscourts.gov/rules/index.html>. Click on "Pending Rules Amendments Waiting Final Action," and then select "Amendments Submitted to the Judicial Conference (Sept. 2002)."

The purpose of this Notice is to provide:

- a) **A synopsis of the key privacy-related amendments to the Rules and Forms; as well as**
- b) **Guidance regarding their *local implementation* by the Bankruptcy Court for the District of New Jersey.**

Please take note and be advised of the following synopsis and procedures.

I. Summary of Key Privacy - Related Changes

-*The Petition, Official Form 1*, will contain only the last four digits of individual debtors' social Security numbers. (NOTE: Pursuant to section 110(c) of the Bankruptcy Code, the certification by a non-attorney bankruptcy petition preparer continues to require the full Social Security number of the individual who actually prepares the document).

- Amendments to *Rule 1007* will require debtors to *submit* a verified statement containing the full nine-digit Social Security number. The new Statement of Social Security number will not be *filed* in the case or become part of the case file available to the public at the Court or over the Internet.

- *Rule 2002*, will be amended to require the clerk to include the debtor's full Social Security number in the copy of the section 341 meeting of creditors notice, *Official Form 9*, sent to creditors, the debtor, the trustee, and the United States Trustee . The copy of the section 341 notice included in the Court case file, however, will contain only the last four digits of the Social Security number.
- *Official Form 10*, Proof of Claim, will require a wage creditor to disclose only the last four digits of the creditor's Social Security number. A trustee can request the full information necessary for tax withholding and reporting at the time the trustee makes a distribution to creditors.
- *Official Form 16A*, the full caption, will be amended to include only the last four digits of any debtor's Social Security number. Accordingly, subsequent notices (after the section 341 notice) will either include the last four digits or none, if *Official Form 16B*, the short caption is used.
- *Official Form 16C*, (Caption of Complaint in Adversary Proceeding Filed by a Debtor) will be abrogated. An amendment to *Official Form 16A* directs that only the last four digits of the debtor's social Security number should appear in a caption. Section 342 (c) of the Bankruptcy Code continues to require the debtor to provide a creditor with the debtor's name, address, and taxpayer identification number on any notice the debtor is required to give to the creditor. An individual debtor can fulfill this requirement by including the debtor's Social Security number on only the creditor's copy of any notice or summons the debtor may serve on the creditor.
- In addition to the changes in the *Petition, Involuntary Petition, Section 341 Meeting of Creditors Notice, Proof of Claim Form 10*, and other notices, the *Schedules, Form 6; and Statement of Financial Affairs, Form 7* will also be revised on December 1, 2003 to require disclosure of only the last four digits of the debtor's account number with each listed creditor, and to require the debtor to disclose only the last four digits of the Social Security number. Attorneys and pro se filers are advised to use these new forms, or Notices of Deficiency will be generated.
- Petition preparers should specifically be aware of the revisions to *Form 3 (Application and Order to Pay Filing Fee in Installments)*, *Form 8 (Chapter 7 Individual Debtor's Statement of Intention)* and *Form 19 (Certification and Signature of Non-Attorney Bankruptcy Petition Preparer)* which have been amended to clarify that pursuant to section 110 (c) of the Bankruptcy Code, the certification by a non-attorney bankruptcy petition preparer continues to require the full Social Security number of the individual who actually prepares the document.

II. Privacy-Related Procedures for Local Implementation

- ***Forms Compliance by Filers*** - Attorneys and parties should use the current versions of the Official Bankruptcy Forms - including the voluntary Petition, Involuntary Petition, Schedules, Statement of Financial Affairs, and Proof of Claim - through November 30, 2003 and the revised forms on and after December 1, 2003, as required by the Bankruptcy Rules. ***All attorneys and parties filing documents in this Court should begin now to review the changes to ensure that their offices have the correct forms available as of December 1st.*** Attorneys and pro se filers using old forms that include the debtors Social Security number, after that date, will be issued a notice of deficiency. An attorney's persistence in filing petitions using old forms, may result in an order to show cause being issued by the Court for appropriate action.

- Debtor's Statement of Social Security Number -

New subdivision (f) of Rule 1007 requires an individual debtor to “submit” to the Court a statement under penalty of perjury setting out the debtor’s full Social Security number, or state that the debtor does not have a Social Security number. The Rule requires that the debtor submit the Statement with the petition. Because the new Statement will be “submitted” rather than “filed,” it will not be part of the case file available to the parties, bar and public. ***Specific form , instructions and requirements for both the conventional (pro se) as well as electronic submission of the debtor’s Statement of Social Security Number will be subsequently published and posted to the Court’s website: www.njb.uscourts.gov.*** Given the importance of the timely submission of the Social Security number to the Clerk’s ability to prepare the section 341 Meeting of Creditors Notice, attorneys and pro se filers failing to submit the Social Security number with the petition, pursuant to the Court’s instructions, will be issued a notice of deficiency requiring the Social Security number to be submitted by a date certain or the case may be dismissed on expedited notice.

- CM/ECF, Privacy Awareness and Filer’s Redaction Responsibility -

Since the implementation of its Case Management/Electronic Case Filing System (“CM/ECF”) on April 1, 2002, the Office of the Clerk has been accepting electronically filed pleadings and making the content of these pleadings available on the Court’s Internet website via WebPACER. A subscriber to WebPACER is able to read, download, store and print the full content of electronically filed documents. The Clerk’s Office will not make electronically available documents that have been sealed or otherwise restricted by court order.

You should not include sensitive information in any document filed with the Court unless such inclusion is necessary and relevant to the case. You must remember that any personal information not otherwise protected, will be made available over the Internet via WebPACER. If sensitive information must be included, the following personal data identifiers must be partially redacted from the pleading, whether it is filed traditionally or electronically: Social Security numbers, financial account numbers, dates of birth and names of minor children.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers specified above may file an unredacted document under seal. This document shall be retained by the court as part of the record. The Court may, however, still require the party to file a redacted copy for the public file.

Counsel is strongly urged to share this notice with all clients so that an informed decision about the inclusion of certain materials may be made. If a redacted document is filed, it is the sole responsibility of counsel and the parties to be sure that all pleadings comply with the requirements of this Court regarding redaction of personal data identifiers.

The Clerk will not review each pleading for redaction. If documents are filed with the full Social Security number or other personal identifiers, the documents will be available electronically with all of the information they contained when filed.

- Attachments, Imaged Documents and Paper Files -

The Court is not responsible for redacting the Social Security number or other personal data from documents filed with the Court, whether in paper or electronic form. Attorneys and pro se filers should make every effort to redact personal identifiers when filing exhibits, attachments, and imaged documents. ***Specific information regarding the redaction of personal identifiers from these types of documents, will be subsequently published and posted to the Court's website: www.njb.uscourts.gov.***

- Privacy Related Protective Orders -

In addition to the guidelines provided above, regarding the protection afforded personal identifiers and other privacy-related information, Counsel should further be aware of the Court's *General Order dated March 27, 2002* at paragraph 12, which provides for the issuance of a protective order by the Court upon motion of any person wishing to limit electronic access to or prohibiting the electronic filing of certain specifically identified materials on the grounds that such material is subject to privacy interests and the electronic access or electronic filing in the action is likely to prejudice those privacy interests.

The Office of the Clerk appreciates the active and ongoing participation of the public and bar in successfully implementing both electronic case filing, as well as the above referenced privacy-related changes to the Rules and Forms. If we can be of additional assistance to you, please feel free to contact us.